1952.

File No. Tenancy II/52(R)

Legal Department

B BRANCH

P 4(E)
1952

Subject:— Rules under the Bombay Tenancy and Agricultural Lands Act, 1948:

Tenancy II/52(R)

125-B

LEGAL DEPARTMENT.

Revised draft notifications for amendment of -

(1) The Bombay Revenue Tribunal Rules, 1939,

(2) The Bombay Revenue Tribunal Regulations, 1939,

(3) The Bombay Tenancy and Agricultural Lands (Tribunal Procedure) Rules, 1949,

are sent herewith.

2. As regards the amendment of the Bombay Revenue Tribunal Records Inspection, Search and Copies Regulations, it appears that no amendment is necessary. The R.D. draft provides for conferring powers on the Joint Secretary of the Tribunal under Regulations 4,5, 6 and 10 but not under Regulation 3. Regulation 3 provides that the records of the Tribunal shall be kept in the custody of the Secretary. The Secretary of the Tribunal would be the Under Secretary to the Government of Bombay in the Revenue Department. The records would therefore be in Bombay. The Joint Secretary would be attached to the office of the official members i.e. the Directors of Local Authorities. Moreover from A on page 11 ante, it will be seen that the Secretary of the Tribunal will mainly look to the record and other work as was being done previously when the Commissioners were members of the Tribunal.

If, therefore, the records will remain in the custody of the Secretary it will not be correct to confer the power on Joint Secretary to receive an application under - Regulation 4 and and under Regulation 5 to grant an application for the inspection of records of the Tribunal or for taking extracts therefrom. For this reason these regulations have not so far been amended even when there was a Joint Secretary during

the period when the Commissioners were the official members of the Tribunal. No amendment of the said Regulations as stated above, is, therefore, necessary.

Id/-J.R.D. 29/10
Additional Secretary to Government.

U.R. to R.D.No. 17983/B , dated the 30th October 1952.

BKS. 2/7/ 4 c.

Legal Department.

Point I at p.3 ante. - Section 14(2) has been deleted by clause 3 of the Bill.

2. Point II. Under section 3 of the Bombay Tenancy and Agricultural Lands Act, 1948, the provisions of Chapter V of the Transfer of Property Act, 1882, which contains section 106 apply so far as they are not inconsistent with the provisions of the Tenancy Act. This being so, the provisions of section 5(2) will prevail over those of section 106 of the Transfer of Property Act and the provision in respect of notice made in section 5(2) is, therefore, in order.

3. Point III on pp.7 and ~~18 to~~ 19. As pointed out above, the provisions of section 106 of the Transfer of Property Act will apply unless they are inconsistent with ~~x~~ any of the provisions of the Tenancy Act. The latter Act does not make any specific provision for service of notice. Consequently, the provisions of section 106 of the Transfer of Property Act in respect of service of notice would be applicable. The service by post would be deemed to be service effected by properly addressing, prepaying and posting by registered post and to having been effected at the time at which the letter would be delivered in the ordinary course of post. If, therefore, the landlord sends a notice by registered post and can produce a receipt in respect of the same, the question of avoiding notice by the tenant cannot arise. The view expressed by R.D. in this behalf is correct. No amendment of the Act is necessary.

4. Point IV. The special provision in new sub-section (4A) of section 32 for scheduled castes and scheduled tribes and socially and educationally backward classes is covered by the provisions of article 15(4) of the Constitution and is free from legal objection.

5. Point V. There is no ambiguity in clause 8, Explanation, of the Bill.

6. Point VI. The proviso inserted by clause 16 of the Bill is a proviso to the whole of sub-section (1) of section 88. It is not as presumed by Shri Gaikwad intended to exempt lands taken under management from the provisions of the Act. On the other hand, the intention is that the exemptions contained in section 88(1) do not apply to the lands which are under management under the Act etc. The proviso is properly placed and no amendment is necessary.

7. Point VII. Under Chapter X-A of the Bombay Land Revenue Code, 1879, a record of right has to be maintained in every village and it gives an idea regarding the interests of persons who are holders, occupants, owners or mortgagees of land or assignees of rent or revenue, etc. Under section 135 J of the Code, an entry in the record of rights shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor. Section 135D(2) provides for appeal in respect of entries in the record of rights. This being so, there is not much substance in the statement made by Shri Gaikwad that if the wording of sub-section (1A) of section 88 is kept as it is, there will be a great scope m for practising fraud on the Tenancy Act. The wording of new sub-section (1A) of section 88 does not require any modification from the legal point of view.

8. For the above reasons, it will be seen that none of the amendments suggested by Shri Gaikwad are necessary.

Id/-J.R.D. 24/12
Additional Secretary to Government.

U.R. to R.D. No. 21841/B dated the 26th December 1952.

BKS. 2/[redacted]